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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100203070-3463-01]

RIN 0648-AY47

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP). Amendment 5 was developed by the New England Fishery Management Council (Council) to: Improve the collection of real-time, accurate catch information; enhance the monitoring and sampling of catch at-sea; and address bycatch issues through responsible management. The proposed Amendment 5 management measures include: Revising fishery management program provisions (permitting provisions, dealer and vessel reporting requirements, measures to address herring carrier vessels, regulatory definitions, requirements for vessel monitoring systems, and trip notifications); increasing observer coverage and requiring industry to contribute funds towards the cost of increased observer coverage; expanding vessel requirements to maximize observer's ability to sample catch at-sea; minimizing the discarding of unsampled catch; addressing the incidental catch and bycatch of river herring; and revising the criteria for midwater trawl vessels' access to

groundfish closed areas.

DATES: Public comments must be received no later than [insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the Council, including the Environmental Impact Statement (EIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EIS/RIR/IRFA is also accessible via the internet at <http://www.nero.nmfs.gov>.

You may submit comments on this document, identified by NOAA-NMFS-2013-0066, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0066, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Herring Amendment 5 Proposed Rule.”
- Fax: (978) 281-9135, Attn: Carrie Nordeen.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name,

address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northeast Regional Office and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone 978- 281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2008 (73 FR 26082), the Council published a notice of intent (NOI) to prepare an EIS for Amendment 4 to the Atlantic Herring FMP to consider measures to: Improve long-term monitoring of catch (landings and bycatch) in the herring fishery, implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and develop a sector allocation process or other limited access privilege program for the herring fishery. The Council subsequently conducted scoping meetings during May and June of 2008 to discuss and take comments on alternatives to these measures. After considering the complexity of the issues under consideration in Amendment 4, the Council voted on June 23, 2009, to split the action into two amendments to ensure the MSA requirements for complying with provisions for ACLs and AMs

would be met by 2011. The ACL and AM components moved forward in Amendment 4, all other measures formerly considered in Amendment 4 were to be considered in Amendment 5. A supplementary NOI was published on December 28, 2009, (74 FR 68577) announcing the split between the amendments, and that impacts associated with alternatives considered in Amendment 5 would be analyzed in an EIS. At that time, measures considered under Amendment 5 included: A catch-monitoring program; measures to address river herring bycatch; midwater trawl access to Northeast multispecies (groundfish) closed areas; and measures to address interactions with the Atlantic mackerel (mackerel) fishery.

Following further development of Amendment 5, the Council conducted MSA public hearings in March 2012, National Environmental Policy Act (NEPA) public hearings at the beginning of June 2012, and, following the public comment period on the draft EIS that ended on June 4, 2012, the Council adopted Amendment 5 on June 20, 2012. The Council submitted Amendment 5 to NOAA Fisheries Service (NMFS) for review on September 10, 2012. Following a series of revisions, the Council submitted a revised version of Amendment 5 to NMFS on March 25, 2013. This action proposes management measures that were recommended by the Council in Amendment 5. If implemented, these management measures would:

- Modify the herring transfer at-sea and offload definitions to better document the transfer of fish;
- Expand possession limit restrictions to all vessels working cooperatively, consistent with pair trawl requirements;
- Eliminate the vessel monitoring system (VMS) power-down provision for limited access herring vessels, consistent with VMS provisions for other fisheries;

- Establish an "At-Sea Herring Dealer" permit to better document the at-sea transfer and sale of herring;
- Establish an "Areas 2/3 Open Access Permit" to reduce the potential for the regulatory discarding of herring in the mackerel fishery;
- Expand dealer reporting requirements;
- Allow vessels to enroll as herring carriers with either a VMS declaration or letter of authorization to increase operational flexibility;
- Expand pre-trip and pre-landing notification requirements, as well as adding a VMS gear declaration, to all limited access herring vessels and vessels issued an Areas 2/3 Open Access Permit to help facilitate monitoring;
- Reduce the advance notice requirement for the observer pre-trip notification from 72 hours to 48 hours;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Establish measures to minimize the discarding of catch before it has been made available to observers for sampling;
- Increase observer coverage on Category A and B vessels and require industry contributions of a target maximum of \$325 per day;
- Establish a framework provision for a river herring catch cap, such that a river herring catch cap may be implemented in a future framework to directly control river herring fishing mortality;
- Allow the existing river herring bycatch avoidance program to investigate providing real-

time, cost-effective information on river herring distribution and fishery encounters in River Herring Monitoring/Avoidance Areas; and

- Expand at-sea sampling of midwater trawl vessels fishing in groundfish closed areas.

A Notice of Availability (NOA) for Amendment 5, as submitted by the Council for review by the Secretary of Commerce, was published in the Federal Register on April 22, 2013 (78 FR 23733). The comment period on Amendment 5 NOA ends on June 21, 2013. Comments submitted on the NOA and/or this proposed rule prior to June 21, 2013, will be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 5. NMFS will consider comments received by the end of the comment period for this proposed rule ([insert date 45 days after date of publication in the FEDERAL REGISTER]) in its decision to implement measures proposed by the Council.

Proposed Measures

The proposed regulations are based on the measures in Amendment 5. The Council has spent several years developing this amendment, and it contains many measures that would improve herring management and that can be administered by NMFS. NMFS supports improvements to fishery dependent data collections, either through increasing reporting requirements or expanding the at-sea monitoring of the herring fishery. NMFS also shares the Council's concern for reducing bycatch and unnecessary discarding. However, a few measures in Amendment 5 may lack adequate rationale or development by the Council, and NMFS identified potential utility and legal concerns with these these measures. These measures include: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers to return to port; and a requirement for

100-percent observer coverage on Category A (All Areas Limited Access Herring Permit) and B (Areas 2/3 Limited Access Herring Permit) vessels, coupled with an industry contribution of a target maximum of \$325 per day toward observer costs. NMFS expressed these potential concerns with these measures throughout the development of this amendment, but these measures have strong support from some stakeholders. This rulemaking describes potential concerns about these measures' consistency with the MSA and other applicable law. Following public comment, NMFS will determine if these measures can be approved or if they must be disapproved. NMFS seeks public comments on all proposed measures in Amendment 5, and in particular, NMFS seeks public comment on the proposed measures and whether those measures should be approved or disapproved.

1. Adjustments to the Fishery Management Program

Amendment 5 would revise several existing fishery management provisions, such as regulatory definitions, reporting requirements, and VMS requirements, and establish new provisions, such as additional herring permits and increased operational flexibility for herring carriers, to better administer the herring fishery.

Definitions

Amendment 5 would revise the regulatory definitions of transfer at-sea and offload to clarify these activities for the herring fishery. Amendment 5 would define a herring transfer at-sea as a transfer of fish from one herring vessel (including fish from the hold, deck, codend, or purse seine) to another vessel, with the exception of fish moved between vessels engaged in pair trawling. Amendment 5 would also define a herring offload as removing fish from a herring vessel to be sold to a dealer. Both transfers at-sea and offloading are frequent activities in the

herring fishery, and the differences between these activities are not always well understood. These definition revisions attempt to more clearly differentiate between activities that trigger reporting requirements. By clarifying these activities for the herring fishery, fishery participants are more likely to report these activities consistently, thereby improving reporting compliance, helping ensure data accuracy and completeness, and lessening the likelihood of double counting herring catch.

Herring Carriers

Amendment 5 would revise operating provisions for herring carrier vessels by establishing an At-Sea Herring Dealer permit for herring carriers that sell fish, allowing vessels to declare herring carrier trips via VMS, and exempting herring carriers from vessel trip report (VTR) requirements. Currently, herring carriers are vessels that may receive and transport herring caught by another fishing vessel, provided the herring carrier has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and has been issued a letter of authorization (LOA) from the NMFS Regional Administrator (RA). The herring carrier LOA exempts the herring carrier from possession limits and catch reporting requirements associated with the vessel's herring permit. To allow time for the processing, issuance, and, if necessary, cancelation of the LOAs, the herring carrier LOAs have a minimum 7-day enrollment period. During the LOA enrollment period, vessels may only act as herring carriers and they may not fish for any species or transport species other than herring.

Amendment 5 would allow vessels to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. If a vessel chooses to declare a herring carrier trip via VMS, it would be allowed to receive and transport herring caught by another

fishing vessel provided the herring carrier has been issued a herring permit, does not have any gear on board capable of catching or processing fish, and only transports herring. By declaring a herring carrier trip via VMS, a vessel would be exempt from the catch reporting (i.e., daily VMS reporting) associated with its herring permit and not bound by the 7-day enrollment period of the LOA. A vessel declaring a herring carrier trip via VMS may only act as a herring carrier and may not fish for any species or transport species other than herring. This measure would increase operational flexibility by allowing vessels to schedule herring carrier trips on a trip-by-trip basis. Vessels that do not possess a VMS or choose not to declare a herring trip via VMS may still act as carriers by obtaining a herring carrier LOA from the NMFS RA and operating in accordance with the LOA requirements.

Herring carriers typically receive herring from harvesting vessels and transport those herring to Federal dealers. The harvesting vessel reports those herring as catch, and dealers report those herring as a purchase. NMFS verifies the amount of herring caught by comparing the amount reported by the harvesting vessel against the amount reported by the dealer. If the herring transported by a herring carrier is not purchased by a Federal dealer, then NMFS does not have any dealer reports to compare to the vessel reports. Amendment 5 would establish an At-Sea Atlantic Herring Dealer Permit that would be required for herring carriers that sell herring, rather than deliver those fish on behalf of a harvesting vessel to a dealer for purchase. This permit would require compliance with Federal dealer reporting requirements. Vessels that have both an At-Sea Atlantic Herring Dealer Permit and a Federal fishing permit would be required to fulfill the reporting requirements of both permits while in possession of both permits, as appropriate. NMFS expects the reporting requirements for the At-Sea Atlantic Herring Dealer

Permit to minimize instances where catch is reported by harvesting vessels but then cannot be matched to dealer reports; thereby improving catch monitoring in the herring fishery.

Amendment 5 would exempt herring carriers from the VTR requirements associated with their vessel permits. Vessels issued herring permits are required to submit weekly VTRs to NMFS. However, dealers have incorrectly attributed catch to herring carrier vessels, rather than correctly attributed catch to the appropriate harvesting vessel, by reporting the herring carrier's VTR serial number rather than the VTR serial number of the harvesting vessel. To help prevent catch being attributed to the wrong vessel and minimize data mismatches between vessel and dealer reports, Amendment 5 would exempt herring carriers from the VTR requirement associated with their herring permit. Dealers would still be responsible for correctly reporting the VTR serial number of the vessel that harvested the herring.

Open Access Herring Permits

Amendment 5 would establish a new open access herring permit for vessels engaged in the mackerel fishery and would re-name the current open access herring permit. The existing open access herring permit (Category D) allows a vessel to possess up to 6,600 lb (3 mt) of herring per trip, limited to one landing per calendar day, in or from any of the herring management areas. All the provisions and requirements of the existing open access herring permit would remain the same, but the Category D permit would be renamed the All Areas Open Access Herring Permit, and this action would create a new open access permit for mackerel fishery participants fishing in herring management Areas 2 and 3.

The new Areas 2/3 Open Access Herring Permit (Category E) would allow vessels to possess up to 20,000 lb (9 mt) of herring per trip, limited to one landing per calendar day, in or

from herring management Areas 2 and 3. Vessels that have not been issued a limited access herring permit but have been issued a limited access mackerel permit would be eligible for the Areas 2/3 Open Access Herring Permit. Vessels may hold both open access herring permits at the same time.

In its letter to NMFS deeming the proposed regulations for Amendment 5, the Council requested that NMFS clarify the reporting and monitoring requirements associated with the new Category E permit. Amendment 5 states that Category E permits would be subject to the same notification and reporting requirements as Category C (Incidental Catch Limited Access Herring Permit) vessels. Therefore, the proposed notification and reporting requirements associated with this new permit would be consistent with the requirements for Category C vessels, including the requirement to possess and maintain a VMS, VMS activity declaration requirements, and catch reporting requirements (i.e., submission of daily VMS catch reports and weekly VTRs).

Amendment 5 does not state that Category E permits would be subject to the same catch monitoring requirements as Category C vessels, including the proposed vessel requirements to help improve at-sea sampling and measures to minimize the discarding of catch before it has been made available to observers for sampling. When describing or analyzing catch monitoring requirements, Amendment 5 does not describe extending catch monitoring requirements for Category C vessels to Category E vessels, nor does it analyze the impacts of catch monitoring requirements on Category E vessels. Because the Category C catch monitoring requirements were not discussed or analyzed in relation to Category E vessels, this action does not propose extending those catch monitoring requirements to Category E vessels.

There is significant overlap between the mackerel and herring fisheries. Mackerel and

herring co-occur, particularly during January through April, which is a time that vessels often participate in both fisheries. Not all vessels participating in the mackerel fishery qualify for a limited access herring permit because they either did not have adequate herring landings or they are new participants in the mackerel fishery. Currently, vessels issued an open access herring permit and participating in the mackerel fishery are required to discard any herring in excess of the open access permit's 6,600-lb (3-mt) possession limit. The creation of the new Areas 2/3 Open Access Herring Permit is intended to minimize the potential for regulatory discarding of herring by limited access mackerel vessels that did not qualify for a limited access herring permit, consistent with MSA National Standard 9's requirement to minimize bycatch to the extent practicable.

Trip Notification and VMS Requirements

Amendment 5 would expand and modify trip notification and VMS requirements for vessels with herring permits to assist with observer deployment and provide enforcement with advance notice of trip information to facilitate enforcement monitoring of landings. Currently, vessels with Category A or B permits, as well as any vessels fishing with midwater trawl gear in Areas 1A, 1B, and/or 3, are required to contact NMFS at least 72 hr in advance of a fishing trip to request an observer. Amendment 5 would modify this pre-trip observer notification requirement, such that vessels with limited access herring permits, vessels with open access Category D permits fishing with midwater trawl gear in Areas 1A, 1B, and/or 3, vessels with open access Category E permits, and herring carrier vessels would be required to contact NMFS at least 48 hr in advance of a fishing trip to request an observer. This measure would assist NMFS's scheduling and deployment of observers across the herring fleet, with minimal

additional burden on the industry, helping ensure that observer coverage targets for the herring fishery are met. NMFS intends for the change from a 72-hr notification requirement to a 48-hr notification requirement to allow vessels more flexibility in their trip planning and scheduling. The list of information that must be provided to NMFS as part of this pre-trip observer notification is described in the proposed regulations. Vessels with herring permits currently contact NMFS via phone. If this measure is implemented, details of how vessels should contact NMFS will be provided in the small entity compliance guide. If a vessel is required to notify NMFS to request an observer before its fishing trip, but it does not notify NMFS before beginning the fishing trip, that vessel would be prohibited from possessing, harvesting, or landing herring on that trip. If a fishing trip is cancelled, a vessel representative must notify NMFS of the cancelled trip, even if the vessel is not selected to carry an observer. All waivers or selection notices for observer coverage will be issued by NMFS to the vessel via VMS so the vessel would have an on-board verification of either the observer selection or waiver. However, a vessel is still subject to the more restrictive 72-hr notification associated with the groundfish midwater trawl or purse seine gear exempted fisheries specified at 50 CFR § 648.80(d)-(e).

Vessels with limited access herring permits are currently subject to a VMS activity declaration. Amendment 5 would expand that VMS activity declaration requirement and add a gear code declaration. Therefore, under Amendment 5, vessels with limited access herring permits, Category E permits, and vessels declaring herring carrier trips via VMS must notify NMFS via VMS of their intent to participate in the herring fishery prior to leaving port on each trip by entering the appropriate activity and gear codes in order to harvest, possess, or land herring on that trip.

Currently, vessels with Category A or B permits, and vessels with a Category C permits fishing with midwater trawl gear in Areas 1A, 1B, and/or 3 are subject to a pre-landing VMS notification requirement. Amendment 5 would expand this pre-landing VMS notification requirement so that vessels with limited access herring permits, Category E permits, and vessels declaring herring carrier trips via VMS must notify NMFS Office of Law Enforcement via VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or if a vessel does not fish seaward of the VMS demarcation line, at least 6 hr prior to landing.

Limited access herring vessels are currently able to turn off (i.e., power-down) their VMS when in port, if they do not hold other permits requiring continuous VMS reporting. Vessels authorized to turn off their VMS in port must submit a VMS activity declaration prior to leaving port. Amendment 5 would prohibit vessels with herring permits from turning off their VMS when in port, unless specifically authorized by NMFS. A vessel representative would request a letter of exemption (LOE) from NMFS to turn off its VMS if that vessel will be out of the water for more than 72 hr. Herring vessels would not be allowed to turn off their VMS until they have received an LOE from NMFS. Additionally, a vessel owner would be able to sign a herring vessel out of the VMS program for a minimum of 30 days by requesting and obtaining an LOE from NMFS. When VMS units are turned off, consistent with an LOE, the vessel would not be able to leave the dock until the VMS unit was turned back on. Amendment 5 would prohibit herring vessels from turning off VMS units in port to improve the enforcement of herring regulations and help make herring VMS regulations consistent with VMS regulations in other Northeast fisheries.

Possession Limits

All herring vessels engaged in pair trawling must hold herring permits, and their harvest is limited by the most restrictive possession limit associated with those permits. Amendment 5 would expand this restriction to all vessels working cooperatively in the herring fishery, including purse seine vessels and vessels that transfer herring at-sea. Therefore, under Amendment 5, each vessel working cooperatively in the herring fishery, including vessels pair trawling, purse seining, and transferring herring at-sea, must be issued a herring permit and would be subject to the most restrictive possession limit associated with the permits issued to those vessels working cooperatively. This measure would establish consistent requirements for vessels working cooperatively in the herring fishery and may improve enforcement of herring possession limits for multi-vessel operations.

Dealer Reporting Requirement

During the development of Amendment 5, some stakeholders expressed concern that herring catch is not accounted for accurately and that there needs to be a standardized method to determine catch. In an effort to address that concern, Amendment 5 would require herring dealers to accurately weigh all fish and, if catch is not sorted by species, dealers would be required to document for each transaction how they estimate relative species composition. During the development of Amendment 5, NMFS identified potential concerns with the utility of this measure.

Dealers are currently required to accurately report the weight of fish, which is obtained by scale weights and/or volumetric estimates. Because this proposed measure does not specify how fish are to be weighed, this proposed measure may not change dealer behavior and,

therefore, the requirement may not lead to any measureable change in the accuracy of catch weights reported by dealers. Further, this measure does not provide standards for estimating species composition. Without standards for estimating species composition or for measuring the accuracy of the estimation method, NMFS may be unable to evaluate the sufficiency of the methods used to estimate species composition. For these reasons, the requirement for dealers to document the methods used to estimate species composition may not improve the accuracy of dealer reporting. While the measure requiring dealers to document methods used to estimate species composition may not have direct utility in monitoring catch in the herring fishery, it may still inform NMFS's and the Council's understanding of the methods used by dealers to determine species weights. That information may aid in development of standardized methods for purposes of future rulemaking. Furthermore, full and accurate reporting is a permit requirement; failure to do so could render dealer permit renewals incomplete, precluding renewal of the dealer's permit. Therefore, there is incentive for dealers to make reasonable efforts to document how they estimate relative species composition, which may increase the likelihood that useful information will be obtained as a result of this requirement.

In light of the forgoing, NMFS seeks public comment on the extent to which the proposed measure has practical utility, as required by the MSA and the Paperwork Reduction Act, that outweighs the additional reporting and administrative burden on the dealers. In particular, NMFS seeks public comment on whether and how the proposed measure helps prevent overfishing, promotes the long-term health and stability of the herring resource, monitors the fishery, facilitates inseason management, or judges performance of the management regime.

2. Adjustments to At-Sea Catch Monitoring

One of the primary goals of Amendment 5 is to improve catch monitoring in the herring fishery. Amendment 5 would revise existing measures associated with at-sea monitoring, such as observer coverage levels and vessel requirements to assist observers sampling at-sea.

Amendment 5 would also establish new provisions to monitor catch in the herring fishery, such as measures to minimize the discarding of catch before it has been sampled by an observer and industry funding to pay for increased observer coverage.

Northeast fisheries regulations specify requirements for vessels carrying NMFS-approved observers, such as providing observers with food and accommodations equivalent to those made available to the crew, allowing observers to access the vessel's bridge, decks, and spaces used to process fish, and allowing observers access to vessel communication and navigations systems. Amendment 5 would expand these requirements, such that vessels issued limited access permits and carrying NMFS-approved observers must provide observers with the following: (1) A safe sampling station adjacent to the fish deck, and a safe method to obtain and store samples; (2) reasonable assistance to allow observers to complete their duties; (3) advance notice when pumping will start and end and when sampling of the catch may begin; and (4) visual access to net/codend or purse seine and any of its contents after pumping has ended, including bringing the codend and its contents aboard if possible. Additionally, Amendment 5 would require vessels issued limited access permits working cooperatively in the herring fishery to provide NMFS-approved observers with the estimated weight of each species brought on board or released on each tow. These measures are anticipated to help improve at-sea catch monitoring in the herring fishery by enhancing the observer's ability collect quality data in a safe and efficient manner.

Currently, observer coverage levels in the herring fishery are determined by the

Northeast Fisheries Science Center, based on the standardized bycatch reporting methodology (SBRM), after consultations with the Council, and funded by NMFS. Amendment 5 would increase the observer coverage in the herring fishery by requiring 100-percent observer coverage on Category A and B vessels. Many stakeholders believe this measure is necessary to accurately determine the extent of bycatch and incidental catch in the herring fishery. The Council recommended this measure to gather more information on the herring fishery so that it may better evaluate and, if necessary, implement additional measures to address issues involving catch and discards. The 100-percent observer requirement is coupled with a target maximum industry contribution of \$325 per day. The at-sea costs associated with an observer in the herring fishery are higher than \$325 per day, and, currently, there is no mechanism to allow cost-sharing of at-sea costs between NMFS and the industry.

Throughout the development of Amendment 5, NMFS advised the Council that Amendment 5 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Because Amendment 5 does not identify a funding source to cover all of the increased costs of observer coverage, the proposed 100-percent observer coverage requirement may not be sufficiently developed to approve at this time.

Recognizing these funding challenges, the Council recommended status quo observer coverage levels and funding for up to 1 year following the implementation of Amendment 5, with the 100-percent observer coverage and partial industry funding requirement to become effective 1 year after the implementation of Amendment 5. During that year, the Council and NMFS, in cooperation with the industry, would attempt to develop a way to fund 100-percent

observer coverage. A technical team, comprised of Council, Mid-Atlantic Fishery Management Council, and NMFS staff, is currently attempting to develop a legal mechanism to allow the at-sea costs of increased observer coverage to be funded by the industry. Even if the 100-percent observer coverage measure in Amendment 5 cannot be approved at this time, the team will continue to work on finding a funding solution to pay for the at-sea cost of the observer coverage in the herring fishery. If the technical team can develop a way to fund the at-sea costs of 100-percent observer coverage, a measure requiring 100-percent observer coverage on Category A and B vessels may be implemented in a future action, perhaps within the 1-year period specified in Amendment 5, subject to NMFS's budget appropriations and other observer data collection needs in the Northeast Region and elsewhere in the country.

Additionally, other measures proposed in this action would help improve monitoring in the herring fishery regardless of whether the 100-percent observer coverage measure is approved at this time. These proposed measures include the requirement for vessels to contact NMFS at least 48 hr in advance of a fishing trip to facilitate the placement of observers, observer sample station and reasonable assistance requirements to improve an observer's ability collect quality data in a safe and efficient manner, and the sampling requirements for midwater trawl vessels fishing in groundfish closed areas to minimize the discarding of unsampled catch.

The same measure that would require 100-percent observer coverage, coupled with a \$325 contribution by the industry, would also require that: (1) The 100-percent coverage requirement would be re-evaluated by the Council 2 years after implementation; (2) the 100-percent coverage requirement would be waived if no observers were available, but not waived for trips that enter the River Herring Monitoring/Avoidance Areas; (3) observer service provider

requirements for the Atlantic sea scallop fishery would apply to observer service providers for the herring fishery; and (4) states would be authorized as observer service providers. Because these additional measures appear inseparable from the 100-percent observer coverage requirement, their approval or disapproval is dependent upon the approvability of the partially industry-funded 100-percent observer coverage measure.

Amendment 5 would require limited access vessels to bring all catch aboard the vessel and make it available for sampling by an observer. The Council recommended this measure to improve the quality of at-sea monitoring data by reducing the discarding of unsampled catch. If catch is discarded before it has been made available to the observer, that catch is defined as slippage. Fish that cannot be pumped and remain in the net at the end of pumping operations are considered operational discards and not slipped catch. Vessels may make test tows without pumping catch on board, provided that all catch from test tows is available to the observer when the following tow is brought aboard. Some stakeholders believe that slippage is a serious problem in the herring fishery because releasing catch before an observer can estimate its species composition undermines accurate catch accounting.

Amendment 5 would allow catch to be slipped if: (1) Bringing catch aboard compromises the safety of the vessel; (2) mechanical failure prevents the catch from being brought aboard; or (3) spiny dogfish prevents the catch from being pumped aboard. But if catch is slipped, the vessel operator would be required to complete a released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit would detail: (1) Why catch was slipped; (2) an estimate of the quantity and species composition of the slipped catch; and (3) the time and location of the slipped catch. Additionally, Amendment 5 would establish slippage

caps for the herring fishery. Once there have been 10 slippage events in a herring management area by vessels using a particular gear type (including midwater trawl, bottom trawl, and purse seine) and carrying an observer, vessels that subsequently slip catch in that management area, using that particular gear type and carrying an observer, would be required to immediately return to port. NMFS would track slippage events and notify the fleet once a slippage cap had been reached. Slippage events due to spiny dogfish preventing the catch from being pumped aboard the vessel would not count against the slippage caps, but slippage events due to safety concerns or mechanical failure would count against the slippage caps. The Council recommended these slippage caps to discourage the inappropriate use of the slippage exceptions, and to allow for some slippage, but not unduly penalize the fleet.

Throughout the development of Amendment 5 NMFS identified potential concerns with the rationale supporting, and legality of, the slippage caps. The need for, and threshold for triggering, a slippage cap (10 slippage events by area and gear type) does not appear to have a strong biological or operational basis. Recent observer data (2008-2011) indicate that the estimated amount of slipped catch is relatively low (approximately 1.25 percent) compared to total catch. Observer data also indicate that the number of slippage events is variable across years. During 2008-2011, the number of slippage events per year ranged between 35 and 166. The average number of slippage events by gear type during 2008, 2009, and 2011 are as follows: 4 by bottom trawl; 36 by purse seine; and 34 by midwater trawl.

Once a slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. Vessels may continue fishing following slippage events 1 through 10, but must return to port following the 11th

slippage event, regardless of the vessel's role in the first 10 slippage events. This aspect of the measure may be seen as arbitrary. Additionally, this measure may result in a vessel operator having to choose between trip termination and bringing catch aboard despite a safety concern. For these reasons, this measure may be inconsistent with the MSA National Standards 2 and 10.

The measures to minimize slippage are based on the sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I. However, there are important differences between these measures. Under the Closed Area I requirements, if midwater trawl vessels slip catch, they are allowed to continue fishing, but they must leave Closed Area I for the remainder of that trip. The requirement to leave Closed Area I is less punitive than the proposed requirement to return to port. Therefore, if the safety of bringing catch aboard is a concern, leaving Closed Area I and continuing to fish would likely be an easier decision for a vessel operator to make than the decision to return to port. Additionally, because the consequences of slipping catch apply uniformly to all vessels under the Closed Area I requirements, inequality among the fleet is not an issue for the Closed Area I requirements, like it appears to be for the proposed slippage caps.

In 2010, the Northeast Fisheries Observer Program (NEFOP) revised the training curriculum for observers deployed on herring vessels to focus on effectively sampling in high-volume fisheries. NEFOP also developed a discard log to collect detailed information on discards in the herring fishery, including slippage, such as why catch was discarded, the estimated amount of discarded catch, and the estimated composition of discarded catch. Recent slippage data collected by observers indicate that: Information about these events, and the amount and composition of fish that are slipped, has improved; and the number of slippage

events by limited access herring vessels has declined. Given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch, rather than released catch affidavits, provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it would provide enforcement with a sworn statement regarding the operator's decisions and may help to understand why slippage occurs.

In summary, NMFS seeks public comment on whether there is a biological need for the proposed slippage caps, whether the trigger (10 slippage events by area and gear type) for the proposed slippage caps has adequate justification, and whether the requirement to return to port would be inequitable or result in safety concerns. After evaluating public comment, NMFS will determine if the proposed slippage caps can be approved or if they must be disapproved. Even if the slippage caps must be disapproved, the ongoing data collection by NEFOP and the proposed sampling requirements for midwater trawl vessels fishing in groundfish closed areas, including a released catch affidavit requirement, would still allow for improved monitoring in the herring fishery, increased information regarding discards, and an incentive to minimize the discarding of unsampled catch.

3. Measures to Address River Herring Interactions

Amendment 5 would establish several measures to address the catch of river herring in the herring fishery to minimize bycatch and bycatch mortality to the extent practicable. River herring (the collective term for alewife and blueback herring) are anadromous species that may co-occur seasonally with herring and are harvested as a non-target species in the herring fishery. When river herring are encountered in the herring fishery, they are either discarded at sea

(bycatch) or, because they closely resemble herring, they are retained and sold as part of the herring catch (incidental catch). For the purposes of this rulemaking, the terms bycatch and incidental catch are used interchangeably. While measures in Amendment 5 are not specifically designed to address the catch of shad (American and hickory) in the herring fishery, the overlap in distribution between river herring and shad suggests that measures to reduce the catch of river herring will also reduce the catch of shad.

River herring are managed by the Atlantic States Marine Fisheries Commission (ASMFC) and individual states. According to the most recent ASMFC river herring stock assessment (May 2012), river herring populations have declined from historic levels and many factors will need to be addressed to allow their recovery, including fishing (in both state and Federal waters), river passageways, water quality, predation, and climate change. In an effort to aid in the recovery of depleted or declining stocks, the ASMFC, in cooperation with individual states, prohibited state waters commercial and recreational fisheries that did not have approved sustainable fisheries management plans, effective January 1, 2012. NMFS considers river herring to be a species of concern and a candidate species under the Endangered Species Act (ESA). NMFS is currently determining whether listing river herring as threatened or endangered under the ESA is warranted.

Amendment 5 would establish River Herring Monitoring/Avoidance Areas for the herring fishery. These would be bimonthly areas to monitor river herring catch and encourage river herring avoidance. The coordinates for these areas are described in the proposed regulations at 50 CFR 648.200(f)(4). The areas are based on NEFOP data between 2005 and 2009 where river herring catch (greater than 40 lb (18 kg)) occurred in the herring fishery. Once

established, the River Herring Monitoring/Avoidance Areas would be subject to the Amendment 5 proposed measures to reduce slippage and require 100-percent observer coverage on Category A and B vessels, if approved. While the magnitude of the effect of river herring bycatch on river herring populations is unknown, minimizing river herring bycatch to the extent practicable is a goal of Amendment 5.

Amendment 5 would establish a mechanism to develop, evaluate, and consider regulatory requirements for a river herring bycatch avoidance strategy in the herring fishery. The river herring bycatch avoidance strategy would be developed and evaluated by the Council, in cooperation with participants in the herring fishery, specifically the Sustainable Fisheries Coalition (SFC); the Massachusetts Division of Marine Fisheries (MA DMF); and the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST). This measure is based on the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring and shad bycatch by working within current fisheries management programs, without the need for additional regulatory requirements. The river herring bycatch avoidance program includes portside sampling, real-time communication with the SFC on river herring distribution and encounters in the herring fishery, and data collection to evaluate if oceanographic features may predict high rates of river herring encounters.

Phase I of the river herring bycatch avoidance strategy would include: (1) Increased monitoring and sampling of herring catch from the River Herring Monitoring/Avoidance Areas; (2) providing for adjustments to the River Herring Monitoring/Avoidance Area and river herring bycatch avoidance strategies through a future framework adjustment to the Herring FMP; and (3)

Council staff collaboration with SFC, MA DMF, and SMAST to support the ongoing project evaluating river herring bycatch avoidance strategies.

Upon completion of the existing SFC/MA DMF/SMAST river herring bycatch avoidance project, Phase II of this proposed measure would begin. Phase II would involve the Council's review and evaluation of the results from the river herring bycatch avoidance project, and a public meeting to consider a framework adjustment to the Herring FMP to establish river herring bycatch avoidance measures. Measures that may be considered as part of the framework adjustment include: (1) Adjustments to the River Herring Monitoring/Avoidance Areas; (2) mechanisms to tracking herring fleet activity, report bycatch events, and notify the herring fleet of encounters with river herring; (3) the utility of test tows to determine the extent of river herring bycatch in a particular area; (4) the threshold for river herring bycatch that would trigger the need for vessels to be alerted and move out of the Area; and (5) the distance and/or time that vessels would be required to move from the Areas.

Amendment 5 would also establish the ability to consider implementing a river herring catch cap for the herring fishery in a future framework adjustment to the Herring FMP.

Amendment 1 to the Herring FMP identified catch caps as management measures that could be implemented via a framework or the specifications process, with a focus on a haddock catch cap for the herring fishery. Amendment 5 contains a specific alternative that considers implementing a river herring catch cap through a framework or the specifications process. On the basis of the explicit consideration of a river herring catch cap, and the accompanying analysis, in Amendment 5, NMFS has advised the Council that it would be more appropriate to consider a river herring catch cap in a framework subsequent to the implementation of Amendment 5.

Amendment 5 contains some preliminary analysis of a river herring catch cap, but additional development of a range of alternatives (e.g., amount of cap, seasonality of cap, consequences of harvesting cap) and the environmental impacts (e.g., biological, economic) of a river herring catch cap would be necessary prior to implementation. Therefore, it would be more appropriate to consider implementing a river herring catch cap through a framework, rather than through the specifications. The Council may begin development of the river herring catch cap framework immediately, but the framework cannot be implemented prior to the approval and implementation of Amendment 5.

During the development of Amendment 5, the ASMFC began work on a new stock assessment for river herring. It was hoped that the new assessment would help inform the analysis to determine a reasonable range of alternatives for a river herring catch cap. The ASMFC's river herring assessment was completed in May 2012, and the Council took final action on Amendment 5 in June of 2012. Therefore, there was not enough time to review the assessment, and if appropriate, incorporate its results in the development of a river herring catch cap in Amendment 5. At its November 2012 meeting, the Council approved a river herring catch cap framework (Framework 3 to the Herring FMP) as a priority for 2013.

In Framework 3, the Council would need to consider whether a river herring catch cap would provide sufficient incentive for the industry to avoid river herring and help to minimize encounters with river herring along with weighing the practicability of the proposed measures. Based on the ASMFC's recent river herring assessment, data do not appear to be robust enough to determine a biologically-based river herring catch cap and/or the potential effects on river herring populations of such a catch cap on a coast-wide scale. Still, the Council supports

establishing the ability to consider a river herring catch cap and considering approaches for setting a river herring catch cap in the herring fishery as soon as possible.

The Mid-Atlantic Fishery Management Council is also considering establishing a river herring catch cap for its mackerel fishery. Due to the mixed nature of the herring and mackerel fisheries, especially during January through April, the potential for the greatest river herring catch reduction would come from the implementation of a joint river herring catch cap for both the herring and mackerel fisheries. On May 23, 2013, the New England and the Mid-Atlantic Councils' technical teams for the herring and mackerel fisheries met to begin development of river herring catch caps. Additionally, the New England Council currently plans to consider Framework 3 at its upcoming June and September 2013 meetings.

One of the primary goals of Amendment 5 is to address bycatch issues through responsible management, consistent with the MSA National Standard 9 requirement to minimize bycatch and mortality of unavoidable bycatch to the extent practicable. Monitoring and avoidance are critical steps to a better understanding of the nature and extent of bycatch in this fishery in order to sufficiently analyze and, if necessary, address bycatch issues. The Council considered other measures to address river herring bycatch in Amendment 5, including closed areas. Because the seasonal and inter-annual distribution of river herring is highly variable in time and space, the Council determined that the most effective measures in Amendment 5 to address river herring bycatch would be those that increase catch monitoring, bycatch accounting, and promote cooperative efforts with the industry to minimize bycatch to the extent practicable.

4. Measures to Address Midwater Trawl Access to Groundfish Closed Areas

Amendment 5 would expand the existing requirements for midwater trawl vessels fishing

in Groundfish Closed Area I to all herring vessels fishing with midwater trawl gear in the Groundfish Closed Areas. These Closed Areas include: Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and Western Gulf of Maine Closure Area. The coordinates for these areas are defined at 50 CFR § 648.81(a)-(e).

Amendment 5 would require vessels with a herring permit fishing with midwater trawl gear in the Closed Areas to carry a NMFS-approved observer and bring all catch aboard the vessel and make it available for sampling by an observer. Herring vessels not carrying a NMFS-approved observer may not fish for, possess, or land fish in or from the Closed Areas. Vessels may make test tows without pumping catch on board, provided that all catch from test tows is available to the observer when the next tow is brought aboard. Amendment 5 would allow catch to be released before it was pumped aboard the vessel if: (1) Pumping the catch aboard could compromise the safety of the vessel, (2) mechanical failure prevents the catch from being pumped aboard, or (3) spiny dogfish have clogged the pump and prevent the catch from being pumped aboard. But if catch is released for any of the reasons stated above, the vessel operator would be required to immediately exit the Closed Area. The vessel may continue to fish, but it may not fish in any Closed Area for the remainder of that trip. Additionally, vessels that release catch before it has been sampled by an observer must complete a midwater trawl released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit would detail: (1) Why catch was released; (2) an estimate of the weight of fish caught and released; and (3) the time and location of the released catch.

As described previously, given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch rather than released catch

affidavits provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it would provide enforcement with a sworn statement regarding the operator's decisions and may help to understand why slippage occurs.

These proposed measures to address midwater trawl access to Groundfish Closed Areas are similar to the proposed measures to minimize slippage; however, there are important differences between these measures. Under these proposed measures, if midwater trawl vessels release catch in the Closed Areas, they are allowed to continue fishing, but they may not fish in Closed Areas for the remainder of that trip. The proposed requirement to leave the Closed Areas and continue to fish is less punitive than the proposed requirement to return to port if a vessel slips catch. Therefore, if the safety of bringing catch aboard is a concern, simply leaving the Closed Areas but continuing to fish would likely be an easier decision for a vessel operator to make than the decision to stop fishing and return to port. Additionally, because the consequences of releasing catch apply uniformly to all vessels under these proposed requirements, the potential of inequality across the fleet is not an issue for these proposed requirements, like it appears to be for the proposed slippage caps.

Analyses in the Amendment 5 FEIS suggest that midwater trawl vessels are not catching significant amounts of groundfish either inside or outside the Closed Areas. Additionally, the majority of groundfish catch by midwater trawl vessels is haddock, and the catch of haddock by midwater trawl vessels is already managed through a haddock catch cap for the herring fishery. However, as described previously, the Council believes it is important to determine the extent and nature of bycatch in the herring fishery. This proposed measure would still allow the herring

midwater trawl fishery to operate in the Closed Areas, but it would ensure that opportunities for monitoring and sampling were maximized.

5. Adjustments to List of Measures Modified Through Framework Adjustments or Specifications

Amendment 5 would specify the ability to modify management measures revised or established by Amendment 5 through a framework adjustment to the Herring FMP or the specifications process.

The measures that could be modified through a framework would include: (1) Changes to vessel trip notification and declaration requirements; (2) adjustments to measures to address net slippage; (3) adjustments to requirements for observer coverage levels; (4) provisions related to an industry-funded catch monitoring program; (5) River Herring Monitoring/Avoidance Areas; (6) provisions for the river herring bycatch avoidance program; (7) changes to criteria/provisions for access to the Groundfish Closed Areas; and (8) river herring catch caps.

The list of measures that could be modified through the specifications process would include: (1) Possession limits; (2) River Herring Monitoring/Avoidance Areas; (3) river herring catch caps; and (4) provisions related to an industry-funded catch monitoring program.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 5 to the Herring FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment and the concerns noted in the preamble.

This proposed rule has been determined to be not significant for purposes of Executive

Order 12866.

The Council prepared a final environmental impact statement (FEIS) for Amendment 5. A notice of availability for the FEIS was published on April 26, 2013 (78 FR 24743). The FEIS describes the impacts of the proposed measures on the environment. Proposed revisions to fishery management program measures, including permitting provisions, dealer and vessel reporting requirements, measures to address carrier vessels, regulatory definitions, and trip notifications, are expected to improve catch monitoring in the herring fishery with positive biological impacts on herring and minimal negative economic impacts on human communities. Proposed increases to observer coverage requirements, measures to improve at sea-sampling by observers, and measures to minimize the discarding of catch before it has been sampled by observers are also expected to improve catch monitoring and have positive biological impacts on herring. The economic impacts on human communities of these proposed measures are varied, but negative economic impacts may be substantial compared to status quo. Proposed measures to address bycatch to the extent practicable are expected to have positive biological impacts and moderate negative economic impacts on human communities. Lastly, all proposed measures are expected to have positive biological impacts on non-target species and neutral impacts on habitat and protected resources.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section. A summary of the analysis follows. A copy of this analysis is available from the

Council or NMFS (see ADDRESSES) or via the Internet at <http://www.nero.noaa.gov>.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The RFA recognizes three kinds of small entities: Small businesses, small organizations, and small governmental jurisdictions. The majority of the proposed measures in Amendment 5 affect vessels participating in the herring fishery. The small business criteria in the Finfish fishing industry is a firm that is independently owned and operated and not dominant in its field of operation, with gross annual receipts \$4 million or less. Additionally, a portion of the proposed measures in Amendment 5 affect herring dealers. The small business standard for fish and seafood wholesalers is 100 employees. Some of the herring dealers are also processors. The small business standard for Fresh and Frozen Seafood Processing is 500 employees. Neither small organizations nor small governmental jurisdictions are expected to experience significant economic impacts by measures proposed in Amendment 5.

In 2011, there were 2,240 vessels with herring permits. Of these vessels, 91 vessels with limited access herring permits (Category A, B, and C) and 2,147 vessels with open access herring permits (Category D) would be considered small entities for RFA purposes. Category D vessels participate incidentally in the herring fishery and would only be subject to the proposed regulatory definitions and the requirements for midwater trawl vessels fishing in the Groundfish Closed Areas. Therefore, this RFA analysis is focused on the 91 vessels with limited access herring permits.

Herring vessels can work cooperatively in temporary, short-term partnerships for pair trawling or seining activities, and vessels may also be affiliated with processing plants. NMFS currently has no data regarding vertical integration or ownership. Therefore, for the purposes of

this RFA analysis, the entity in the harvesting sector is the individual vessel. Additionally, at this time, all dealers/processors are treated as small entities.

Section 5.0 in Amendment 5 describes the vessels, key ports, and revenue information for the herring fishery, therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Minimizing Significant Economic Impacts on Small Entities

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirements, which are described in detail in the preamble, have been submitted to OMB for approval as a new collection. Amendment 5 would also remove a VMS power-down exemption for herring vessels and a catch reporting requirement for herring carrier vessels. Amendment 5 would prohibit herring vessels from powering-down their VMS units in port, unless specifically authorized by the NMFS RA. The existing power-down exemption was approved under OMB Control Number 0648-0202 and, upon renewal, will be removed from that information collection. Additionally, Amendment 5 would remove the existing weekly VTR requirement for herring carrier vessels. That requirement was approved under OMB Control Number 648-0212 and, upon renewal, will be removed from that information collection. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

Amendment 5 would establish two new herring permits. The application process to obtain a new Areas 2/3 Open Access Permit takes an estimated 1 min to complete and costs \$0.45 to mail. The new Areas 2/3 Open Access Herring Permit would require the vessel to purchase and maintain a VMS. Because other Northeast Federal permits require vessels to

maintain a VMS, it is estimated that only 6 vessels that were issued open access herring permits do not already have a VMS. The average cost of purchasing and installing a VMS is \$3,400, the VMS certification form takes an estimated 5 min to complete and costs \$0.45 to mail, and the call to confirm a VMS unit takes an estimated 5 min to complete and costs \$1. The average cost of maintaining a VMS is \$600 per year. Northeast regulations require VMS activity declarations and automated polling of VMS units to collect position data. Each activity declaration takes an estimated 5 min to complete and costs \$0.50 to transmit. If a vessel takes an average of 5 trips per year, the burden estimate for the activity declarations would be 25 min and \$3. Each automated polling transmission costs \$0.06 and a vessel is polled once per hour every day of the year. The annual estimated cost associated with polling is \$526. In summary, the total annual burden estimate for a vessel to purchase and maintain a VMS would be 35 min and \$4,530.

Amendment 5 would also require that vessels issued the new Areas 2/3 Open Access Herring Permit comply with existing catch reporting requirements for Category C vessels, specifically the submission of daily VMS reports and weekly VTRs. The cost of transmitting a catch report via VMS is \$0.60 per transmission and it is estimated to take 5 min to complete. If a vessel takes an average of 5 trips per year and each trip lasts an average of 2 days, the total annual burden estimate of daily VMS reporting for a vessel is estimated to be 50 min and \$6. Category D vessels are currently required to submit weekly VTRs, so there would be no additional burden associated with VTRs for those vessels. If a vessel without a Category D permit was issued the new Areas 2/3 Open Access Herring Permit, the annual burden estimate of VTR submissions is \$18. This cost was calculated by multiplying 40 (52 weeks in a year minus 12 (number of monthly reports)) by \$0.45 to equal \$18. The VTR is estimated to take 5 min to

complete. Therefore, the total annual burden estimate of weekly VTRs is \$18 and 3 hr and 20 min.

This action proposes new reporting burdens associated with obtaining an At-Sea Herring Dealer Permit. The new herring dealer permit is for herring carriers that sell fish. Historically, approximately 25 vessels per year have been issued an LOA to act a herring carrier. The application for an At-Sea Herring Dealer Permit would take an estimated 15 min to complete and \$0.45 to mail. The annual burden estimate to renew an At-Sea Herring Dealer Permit would be 5 min to complete the renewal and \$0.45 to mail the renewal. Dealers are required to submit weekly reports via the internet. These reports are estimated to take 15 min to complete; therefore, the annual burden associated with dealer reporting is 13 hr. The cost for this information collection is related to internet access. The 25 vessels that may obtain the new At-Sea Herring Dealer Permit may not already be accessing the internet for other reasons/requirements, and would have to obtain internet access. Internet access would be required for the submission of weekly dealer reports. Operating costs consist of internet access, available through either dial-up or cable modem, with an average annual cost of \$652 per year. Therefore, the annual cost burden associated with dealer reporting is estimated to be \$652.

Amendment 5 would expand the number of herring vessels required to submit a VMS pre-landing notification and would add a gear declaration to the existing VMS activity declaration requirement. A subset of herring vessels are currently required to notify NMFS OLE via VMS 6 hr prior to landing, and this action proposes to expand that requirement to all limited access herring vessels, vessels issued the new Areas 2/3 Open Access Herring Permit (Category E), and herring carrier vessels. It is estimated that Amendment 5 would require an additional 51

Herring Category C vessels, 80 Herring Category E vessels, and 25 herring carriers to submit VMS pre-landing notification. Each VMS pre-landing notification is estimated to take 5 min to complete and costs \$1. Category C vessels are estimated to take an average of 13 trips per year, so the total annual burden estimate for a Category C vessel making VMS pre-landing notifications would be 65 min and \$13. The new Category E vessels would take an estimated 5 trips per year, so the total burden estimate for a Category E vessel making VMS pre-landing notifications would be 25 min and \$5. Herring carriers are estimated to take an average of 4 trips per year, so the total annual burden estimate for a herring carrier making VMS pre-landing notifications would be 20 min and \$4. The proposed gear declaration would apply to limited access herring vessels. There would be no additional reporting burden associated with the gear declaration because it would only be an additional field added to the existing VMS pre-trip notification requirement, approved under OMB 0648-0202.

Amendment 5 would allow vessels to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. Vessels may declare a herring carrier trip via VMS, if they already have and maintain a VMS, or continue to request an LOA. There would be no additional reporting burden associated with this measure because both the LOA and the VMS activity declaration are existing requirements for herring vessels.

Amendment 5 would increase the reporting burden for measures designed to improve at-sea sampling by NMFS-approved observers. A subset of herring vessels are currently required to notify NMFS to request an observer, and this action proposes to expand that requirement to all limited access herring vessels, vessels issued the new Areas 2/3 Open Access Herring Permit (Category E), and herring carrier vessels. This pre-trip observer notification requirement is

estimated to affect 156 additional vessels. Vessels would be required to call NMFS to request an observer at least 48 hr prior to beginning a herring trip. The phone call is estimated to take 5 min to complete and is free. If a vessel has already contacted NMFS to request an observer and then decides to cancel that fishing trip, Amendment 5 would require that vessel to notify NMFS of the trip cancelation. The call to notify NMFS of a cancelled trip is estimated to take 1 min to complete and is free. If a vessel takes an estimated 25 trips per year, the total annual reporting burden associated with the pre-trip observer notification would be 2 hr 30 min.

Amendment 5 would require a released catch affidavit for limited access vessels that discard catch before it had been made available to an observer for sampling (slipped catch). The reporting burden for completion of the released catch affidavit is estimated to average 5 min, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The cost associated with the affidavit is the postage to mail the form to NMFS (\$0.45). The affidavit requirement would affect an estimated 93 limited access herring vessels. If those vessels slipped catch once per trip with an observer onboard, and took an estimated 38 trips per year, the total annual reporting burden for the released catch affidavit would be 3 hr 10 min and \$17.

Amendment 5 would also require vessels fishing with midwater trawl gear in Groundfish Closed Areas to complete a released catch affidavit if catch is discarded before it is brought aboard the vessel and made available for sampling by an observer. At this time, there are no known Category D vessels that fish with midwater trawl gear; therefore, there is no additional reporting burden, beyond that described above, for the released catch affidavit associated with Groundfish Closed Areas.

Amendment 5 would require herring dealers to document, for each transaction, how they estimate the relative composition of catch, if catch is not sorted by species. This requirement would apply to all transactions involving the sale of herring and would be in addition to the existing dealer reporting requirements. The additional reporting burden of documenting relative species composition for each of the above types of transactions is expected to take 5 min per transaction. In April 2013, there were 262 entities that held either a herring dealer (260) or herring at-sea processor permit (2). The new Herring At-Sea Dealer Permit for herring carriers that sell fish may affect up to 25 additional entities. In total, an estimated 287 herring dealers may be required to report relative species composition. Dealers make an average of 3,000 transactions per year. Therefore, the annual burden associated of documenting relative species composition for each herring dealer is estimated to be 250 hr.

Amendment 5 would require that when vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, vessels must provide to observers, when requested, the estimated weight of each species brought on board or released on each tow. NMFS expects that the vessel operator would do this for each trip, and not on a tow by tow basis. Vessel operators should have this information recorded and available to report to the observer, so NMFS estimates the response to take 1 min and it would not have any associated cost since it would be a verbal notification for the observer to record.

Amendment 5 would require 100-percent observer coverage on Category A and B herring vessels, coupled with a \$325 per day contribution by industry. This proposed industry-funded observer program would be effective 1 year following the implementation of Amendment

5. There are an estimated 42 Category A and B vessels in the herring fishery. NMFS estimates that each vessel spends an average of 42 days per year at sea. Therefore, the annual cost associated with carrying an NMFS-approved observer for a Category A or B vessel is estimated to be \$13,650.

Under the proposed industry-funded observer program, Category A and B vessels would be required to contact an observer service provider to request an observer. An estimated 42 vessels would be subject to this requirement. If those vessels took an estimated 25 trips per year and the call to the observer service provide took an estimated 10 min to complete and cost \$1, the annual reporting burden of the proposed notification requirement is estimated to be 4 hr and 10 min and \$25. If an observer service provide had no observer available, Category A and B vessels would be required to notify NMFS to request an observer waiver. The likelihood of an observer not being available is anticipated to be low. Therefore, if on 2 occasions the vessels needed to contact NMFS to request a waiver, and the call took an estimated 5 min to complete and was free, the annual reporting burden to request a waiver is estimated to be 10 min.

NMFS expects that additional observer service providers may apply for certification under the observer certification procedures found at 50 CFR 648.11(h). NMFS expects that 3 additional providers may apply for certification. In addition, existing providers, and the 3 potential additional providers, would be required to submit additional reports and information required of observer service providers as part of their certification. NMFS expects that 6 providers would be subject to these new requirements. Observer service providers must comply with the following requirements, submitted via email, fax, or postal service: Submit applications for approval as an observer service provider; formally request observer training by NEFOP;

submit observer deployment reports and biological samples; give notification of whether a vessel must carry an observer within 24 hr of the vessel owner's notification of a prospective trip; maintain an updated contact list of all observers that includes the observer identification number; observer's name mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the observer is "in service." The regulations would also require observer service providers to submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of observer duties as well as all contracts between the service provider and entities requiring observer services for review to NMFS. Observer service providers also have the option to respond to application denials, and submit a rebuttal in response to a pending removal from the list of approved observer providers. NMFS expects that all of these reporting requirements combined are expected to take 1,734 hr of response time per year for a total annual cost of \$25,363 for the affected observer providers. The following table provides the detailed time and cost information for each response item.

Observer provider requirements	Number of Entities	Total # of items	Time (hours) per Response	Total time burden (hours)	Cost per Response	Annual cost
Observer deployment report by email	6	1500	0.167	251	\$0	\$0
Observer availability report by email.	6	900	0.167	150	\$0	\$0
Safety refusals by email	6	150	0.5	75	\$0	\$0
Raw observer data by express mail	6	1500	0.083	125	\$13	\$19,500
Observer debriefing	6	420	2	840	\$12	\$5,040
Other reports	6	210	0.5	105	\$0	\$0
Biological samples	6	1500	0.083	125	\$0.50	\$750

New application to be a service provider	3	3	10	30	\$0.44	\$1
Applicant response to denial	1	1	10	10	\$0	\$0
Request for observer training	3	6	0.5	3	\$1.80	\$11
Rebuttal of pending removal from list of approved observer providers	1	1	8	8	\$0	\$0
Observer contact list updates	3	36	0.083	3	\$0	\$0
Observer availability updates	3	36	0.017	1	\$0	\$0
Service provider material submissions	6	12	0.5	6	\$2.50	\$30
Service provider contracts	6	12	0.5	6	\$2.50	\$30
Total				1736		\$25,363

Public comment is sought regarding the following: Whether this proposed collection of information is necessary for the proper performance of agency functions, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see ADDRESSES), and email to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently

valid OMB Control Number.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

1. Adjustments to the Fishery Management Program

Amendment 5 proposes to revise several existing fishery management provisions, such as regulatory definitions and VMS requirements, and to establish new provisions, such as a new dealer permit and the mechanism to consider a river herring catch cap in a future framework, to better administer the herring fishery. Two alternatives, the proposed action and the no action alternative, were considered for each of these provisions. Because of the administrative nature of the proposed measures, the economic impacts of selecting the proposed action relative to the no action alternative is anticipated to have a neutral or low positive economic impact on fishery-related businesses and communities. Revising the regulatory definitions for transfer at-sea and offload for the herring fishery would reduce any confusion and/or errors related to catch reporting, which may, in turn, improve reporting compliance, help ensure data accuracy and completeness, and lessen the likelihood of double counting herring catch. Establishing an At-Sea Herring Dealer Permit for herring carrier vessels that sell herring at sea may improve catch monitoring by allowing catch reported by harvesting vessels to be matched with sales of herring by herring carrier vessels. Expanding vessel requirements related to observer sampling would help ensure safe sampling and improve the quality of monitoring data. Proposed measures that result in improved catch monitoring are anticipated to have low positive economic impacts because they may, over the long-term, result in less uncertainty and, ultimately, result in additional harvest being made available to the herring industry. Specifying that vessels working cooperatively in the herring fishery would be subject to the most restrictive possession limit

associated with the permits issued to the vessels may improve enforcement of herring possession limits in multi-vessel operations. Eliminating the VMS power-down provision for herring vessels would make provisions for herring vessels more consistent with other FMPs and would enhance enforcement of the herring regulations. Lastly, establishing the mechanism to consider a river herring catch cap in a future framework would be a potential way to evaluate directly controlling river herring mortality in the herring fishery.

Amendment 5 proposes that herring carriers be allowed to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. Currently, herring carriers enroll as herring carriers with an LOA. When vessels are enrolled as carriers they cannot have fishing gear aboard, fish for any species, or carry any species other than herring. The LOA has a minimum enrollment period of 7 days. In addition to the proposed action, Amendment 5 considered the no action alternative (herring carriers enroll with an LOA) and a non-selected alternative (vessels must declare herring carrier trips via VMS). Both the proposed action and the non-selected alternative would provide increased operational flexibility at the trip level as compared to the no action alternative, without the minimum 7-day enrollment period. However, the non-selected alternative would require vessels that did not already use a VMS to purchase and maintain a VMS. In 2010, approximately 20 vessels that were not required to maintain a VMS aboard their vessels requested herring carrier LOAs. The cost of purchasing a VMS ranges between \$1,700 and \$3,300, and operating costs are approximately \$40 to \$100 per month. The proposed action has the potential for low positive impacts for fishery-related businesses and communities resulting from the increased operational flexibility of allowing trip-by-trip planning in comparison to the no action alternative. The non-selected alternative and the

proposed action would both have the potential for low positive benefits from allowing trip-by-trip planning. In comparison to the proposed action, the non-selected alternative may have a low negative impact by requiring vessels to purchase and maintain a VMS, but that impact would be minimal because of the small number of vessels likely affected. Overall, the proposed action is anticipated to have the greatest positive impact on fishery-related business and communities in comparison the no action and non-selected alternative, but that impact is low.

Amendment 5 proposes that existing pre-trip observer notification and VMS pre-landing notification requirements be expanded to additional herring vessels and that a gear declaration be added to the existing VMS activity declaration. The intent of these requirements is: (1) To better inform NEFOP of when/where herring fishing activity may occur and assist in the effective deployment of observers; (2) to better inform NMFS OLE of when/where vessels will be landing their catch land to facilitate monitoring of the landing and/or catch; and (3) to provide OLE with trip-by-trip information on the gear being fished to improve the enforcement of herring gear regulations. Amendment 5 considered only one alternative to the proposed action, the no action alternative. The no action alternative would not impose additional trip notification requirements, therefore there would be no additional impacts on fishery-related business and communities. Any impact to the herring fishery because of the proposed action would be through increased administrative and regulatory burden, but the number of vessels affected and the actual cost of the additionally reporting is low. In comparison to the no action alternative, the proposed action is anticipated to result in improved catch monitoring and enforcement of herring regulations, translating into low positive impacts for fishery-related businesses and communities.

Dealer Reporting Requirements

Amendment 5 would require herring dealers to accurately weigh all fish and, if catch is not sorted by species, dealers would be required to document how they estimate relative species composition in each dealer report. Dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because the proposed action does not specify how fish are to be weighed, the proposed action is not anticipated to change dealer behavior and, therefore, is expected to have neutral impacts in comparison to the no action alternative. Amendment 5 considered three alternatives to the proposed action, the no action alternative, Option 2A, and Option 2C. Option 2A would require that relative species composition be documented annually and Option 2C would require that a vessel representative confirm each dealer report. Overall, relative to the no action alternative, the proposed action and Option 2A may have a low negative impact on dealers due to the regulatory burden of documenting how species composition is estimated. In comparison, Option 2C may have a low positive impact on fishery participants, despite an increased regulatory burden, if it minimizes any loss of revenue due to data errors in the dealer reports and/or the tracking of herring catch.

Areas 2/3 Open Access Herring Permit

Amendment 5 would establish a new open access herring permit with a 20,000-lb (9-mt) herring possession limit in herring management Areas 2 and 3 for limited access mackerel vessels. Amendment 5 considered two alternatives to the proposed action, the no action alternative (6,600-lb (3-mt) herring possession limit) and the non-selected alternative (10,000-lb (4.5-mt) herring possession limit). The impact of the proposed action on fishery-related businesses and communities is expected to be more positive than that of the no action alternative

or the non-selected alternative. There is significant overlap between the mackerel and herring fisheries. Currently, vessels issued an open access herring permit and participating in the mackerel fishery are required to discard any herring in excess of the open access permit's 6,600-lb (3-mt) possession limit. The analysis predicts that approximately 60 vessels would be eligible for the new open access herring permit. In comparison to the no action and non-selected alternatives, the proposed action could decrease the occurrence of regulatory discards and increase revenue for vessels that are eligible for this permit.

2. Adjustments to the At-Sea Catch Monitoring

Amendment 5 would require 100-percent observer coverage on Category A and B vessels coupled with an industry contribution of \$325 per day. Amendment 5 considered three alternatives to the proposed action (Alternative 2), the no action alternative (existing SBRM process for determining observer coverage levels), Alternative 3 (modified SBRM process for determining observer coverage levels), and Alternative 4 (Council-specified targets for observer coverage levels). Additionally, for each of the action alternatives, Amendment 5 considered funding options, NMFS funding (no action alternative) versus NMFS and industry funding, and observer service provider options, all observer service providers subject to the same requirements (no action alternative) versus states as authorized observer service providers. The proposed action specifies the highest level of observer coverage in comparison to the no action alternative and the non-selected alternatives. The specific coverage levels under the no action alternative and the non-selected alternatives are unknown at this time, because they would depend on an analysis of fishery data from previous years, but coverage levels under these alternatives are expected to be less than 100 percent. The proposed action specifies an industry

contribution of \$325 per day. For Category A and B vessels, a contribution of \$325 is estimated to be 3-6 percent of daily revenue and 8-45 percent of daily operating costs. The other non-selected alternatives (no action, Alternative 3, Alternative 4) do not specify an industry contribution, so a comparison of direct costs to industry across alternatives is not possible. The proposed action is likely to have the largest negative impact on fishery-related businesses and communities of any alternatives due to the cost of observer coverage, potentially resulting in less effort and lower catch. In the long-term, increased monitoring and improved data collections for the herring fishery may translate into improved management of the herring fishery that would benefit fishery-related businesses and communities. Options for observer service providers are likely to have neutral impacts on fishery-related businesses across alternatives.

Amendment 5 would require limited access vessels to bring all catch aboard the vessel and make it available for sampling by an observer. If catch was slipped before it was sampled by an observer, it would count against a slippage cap and require a released catch affidavit to be completed. If a slippage cap was reached, a vessel would be required to return to port immediately following any additional slippage events. Amendment 5 considered four alternatives to the proposed action, the no action alternative, Option 2, Option 3, and Option 4. These non-selected alternatives include various elements of the proposed action, including a requirement to complete a released catch affidavit (Option 2), requirement to bring all catch aboard and make it available to an observer for sampling (Option 3), and catch deduction for slipped catch (Option 4). The no action alternative would not establish slippage prohibitions or slippage caps, but it would maintain the existing sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I.

Negative impacts to the herring fishery associated with all these alternatives include increased time spent pumping fish aboard the vessel to be sampled by an observer, potential decrease in vessel safety during poor operating conditions, and the administrative burden of completing a released catch affidavit. The penalties associated with slippage vary slightly across the alternatives. A deduction of 100,000 lb (45 mt) per slippage event in each management area (Option 4) would reduce the harvest available to fishing vessels and a trip termination (proposed action) after a slippage event would result in higher costs for fishing vessels, especially those fishing in offshore areas. The overall impacts of the options that propose catch deductions (Option 4) and trip termination (proposed action) are similar and, in comparison to the no action alternative, are negative. Costs associated with herring fishing trips are high, particularly with the current cost of fuel. Trips terminated prematurely could result in unprofitable trips, leaving not only the owners with debt, but crewmembers without income and negative impacts on fishery-related businesses and communities.

3. Measures to Address River Herring Interactions

Amendment 5 would establish River Herring Monitoring/Avoidance Areas. Amendment 5 considered two alternatives to the proposed action, the no action alternative and a non-selected alternative (establishing River Herring Protection Areas). Relative to the no action alternative, the proposed action and the non-selected alternative are expected to have a negative impact on fishery-related businesses and communities due to the costs associated with increased monitoring and/or area closures. The impact of the River Herring Areas would depend on the measures applied to the areas, such as increased monitoring, requirement that catch be brought aboard the vessels for sampling by observers, and closures. The proposed action, requiring 100-

percent observer coverage in the River Herring Monitoring/Avoidance Areas, would likely have the largest negative impact on fishery-related businesses and communities, especially with the industry required to pay \$325 per day. The non-selected option requiring all catch to be brought aboard would have a similar negative impact if 100-percent observer coverage was required. The non-selected option implementing either increased monitoring or closures after a river herring catch trigger was reached would have less impact on fishery-related businesses and communities than the proposed action, because the additional requirements would not become effective until the catch trigger is reached. The proposed action also includes support for the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring bycatch with real-time information on river herring distribution and herring fishery encounters. This aspect of the proposed action has the potential to mitigate some of the negative impacts of the proposed action by developing river herring bycatch avoidance measures in cooperation with the fishing industry.

4. Measures to Address Midwater Trawl Access to Groundfish Closed Areas

Amendment 5 would expand the existing monitoring and sampling requirements for Groundfish Closed Area I to all herring vessels fishing with midwater trawl gear in the Groundfish Closed Areas. Amendment 5 considered three alternatives to the proposed action (Alternative 3/4), the no action alternative (maintain existing sampling requirements for Closed Area I), Alternative 2 (removing existing sampling requirements for Closed Area I), and Alternative 5 (prohibiting fishing with midwater trawl gear in the Closed Areas). Compared to the no action alternative and the non-selected alternatives, the proposed action would have the highest negative impact on fishery participants because of the following requirements: (1) 100-

percent observer coverage; (2) bringing all catch aboard for sampling; (3) leaving the Closed Areas if catch is released before it has been sampled by an observer; (4) and completing a released catch affidavit. The midwater trawl fleet may avoid the Closed Areas if fishing in the Areas becomes too expensive. If observers are not available, the impact of the proposed action would be similar to Alternative 5 that would close the Closed Areas to midwater trawl vessels. While a portion of the herring revenue has been shown to come from the Closed Areas, that revenue is not expected to completely disappear. Instead, the midwater fleet would likely fish in other areas, this would be a potential additional cost for the fleet if those areas are less productive than the Closed Areas.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 30, 2013

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.2, definitions of “Atlantic herring carrier” and “Atlantic herring dealer” are revised and definitions of “Atlantic herring offload,” “Atlantic herring transfer at-sea” and “Slippage in the Atlantic herring fishery” are added in alphabetical order to read as follows:

* * * * *

Atlantic herring carrier means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel or has declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

Atlantic herring dealer means:

(1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait;

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port; or

(3) Any person owning or operating an Atlantic herring carrier that sells Atlantic herring received at sea or in port from a vessel issued a Federal Atlantic herring permit.

* * * * *

Atlantic herring offload means to remove, begin to remove, to pass over the rail, or otherwise take Atlantic herring off of or away from any vessel issued an Atlantic herring permit for sale to either a permitted at-sea Atlantic herring dealer or a permitted land-based Atlantic herring dealer.

* * * * *

Atlantic herring transfer at-sea means a transfer from the hold, deck, codend, or purse seine of a vessel issued an Atlantic herring permit to another vessel for personal use as bait, to an Atlantic herring carrier or at-sea processor, to a permitted transshipment vessel, or to another permitted Atlantic herring vessel. Transfers between vessels engaged in pair trawling are not herring transfers at-sea.

* * * * *

Slippage in the Atlantic herring fishery means catch that is discarded prior to it being brought aboard a vessel issued an Atlantic herring permit and/or prior to making it available for sampling and inspection by a NMFS-approved observer. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water.

* * * * *

3. In § 648.4, paragraphs (a)(10)(ii) and (a)(10)(v) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) * * *

(ii) Atlantic herring carrier. An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.10(m)(1). On Atlantic herring carrier trips under either the letter of authorization or an Atlantic herring carrier VMS trip declaration, an Atlantic herring carrier is exempt from the VMS, IVR, and VTR vessel reporting requirements, as specified in § 648.7 and subpart K of this part, except as otherwise required by this part. If not declaring an Atlantic herring carrier trip via VMS, an Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator and there is a minimum enrollment period of 7 calendar days for a letter of authorization. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not conduct fishing activities, except for purposes of transport, or possess any fishing gear on board the vessel, and they must be used exclusively as an Atlantic herring carrier vessel and must carry observers if required by NMFS. While operating under a valid letter of authorization or Atlantic herring carrier VMS trip declaration, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not possess, transfer, or land any species other than Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring

Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels.

* * * * *

(v) Open access herring permits. A vessel that has not been issued a limited access Atlantic herring permit may obtain an All Areas open access Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip from all herring management areas, limited to one landing per calendar day, and/or an Areas 2/3 open access Atlantic herring permit to possess up to 20,000 lb (9 mt) of herring per trip from Herring Management Areas 2 and 3, limited to one landing per calendar day, provided the vessel has also been issued a Limited Access Atlantic Mackerel permit, as defined in paragraph (a)(5)(iii) of this section.

* * * * *

4. In § 648.7, paragraph (a)(1)(iv) is added, and paragraphs and (b)(2)(i) introductory text, (b)(3)(i) introductory text, (b)(3)(i)(A), and (b)(3)(i)(C)(2) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(iv) Dealer reporting requirements for Atlantic herring. In addition to the requirements under paragraph (a)(1)(i) of this section, dealers issued a permit for Atlantic herring must accurately weigh all fish. If dealers do not sort by species, dealers are required to document for each report submitted how the species composition of catch is determined.

* * * * *

(b) * * *

(2) * * *

(i) Atlantic herring owners or operators issued an All Areas open access permit. The owner or operator of a vessel issued an All Areas open access permit to fish for herring must report catch (retained and discarded) of herring to an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hr (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

(3)* * *

(i) Atlantic herring owners or operators issued a limited access permit or Areas 2/3 open access permit. The owner or operator of a vessel issued a limited access permit or Areas 2/3 open access permit to fish for herring must report catches (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained

for each herring management area; and pounds discarded for each herring management area.

Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit or Areas 2/3 open access permit must submit an Atlantic herring catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

* * * * *

(C) * * *

(2) A vessel that transfers herring at sea to an authorized carrier vessel must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel transfers catch to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

* * * * *

5. In § 648.10, paragraphs (b)(8) and (c)(2)(i)(B) are revised, paragraph (c)(2)(i)(C) is removed and reserved, and paragraph (m) is added to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(8) A vessel issued a limited access herring permit (i.e., All Areas Limited Access Permit, Areas 2 and 3 Limited Access Permit, Incidental Catch Limited Access Permit), or a vessel issued an Areas 2/3 open access herring permit, or a vessel declaring an Atlantic herring carrier trip via VMS.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), an Atlantic sea scallop limited access permit, or an Atlantic herring permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

* * * * *

(m) Atlantic herring VMS notification requirements. (1) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit intending to declare into the herring fishery or a vessel issued an Atlantic herring permit and intending to declare an Atlantic herring carrier trip via VMS must notify NMFS by declaring a herring trip with the appropriate gear code prior to leaving port at the start of each trip in order to harvest, possess, or land herring on that trip.

(2) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit or a vessel that declared an Atlantic herring carrier trip via VMS must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the Federal Register consistent with the Administrative Procedure Act.

* * * * *

6. In § 648.11, paragraphs (h)(1), (h)(3)(vi), (h)(3)(ix), (h)(4)(i)-(iii), (h)(5)(i), (h)(5)(ii)(B) and (C), (h)(5)(iii), (h)(5)(vi), (h)(5)(viii)(A), (h)(7) introductory text, (i)(2), and (i)(3)(ii) are revised, and paragraph (m) is added to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(h) * * *

(1) General. An entity seeking to provide observer services to the Atlantic sea scallop or Atlantic herring fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St. Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop and Atlantic herring vessel owners and shall be posted on NMFS' Web page, as specified in paragraph (g)(4) of this section.

* * * * *

(3) * * *

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop or Atlantic herring fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

* * * * *

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Certification Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

* * * * *

(4) * * *

(i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop or Atlantic herring fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS' Web site specified in paragraph (g)(4) of this section, and in any outreach information to the industry. Approved

observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop or Atlantic herring fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop or Atlantic herring fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) * * *

(i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop or Atlantic herring fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop or Atlantic herring fishery, unless the observer service provider does not have an available observer within 24 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three

deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified.

* * * * *

(ii) * * *

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop or Atlantic herring vessel or to attend a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Certification Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS' Web site specified in paragraph (g)(4) of this section under the Sea Scallop and Atlantic Herring Observer Program, prior to any deployment and/or prior to NMFS observer certification training; and

* * * * *

(iii) Observer deployment logistics. Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop or Atlantic herring fishery.

* * * * *

(vi) Observer training requirements. The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

* * * * *

(viii) * * *

(A) An observer service provider may refuse to deploy an observer on a requesting scallop or Atlantic herring vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a scallop vessel or within 24 hr of receiving a request for an observer from an Atlantic herring vessel.

* * * * *

(7) Removal of observer service provider from the list of approved observer service providers. An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of

approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop or Atlantic herring trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

* * * * *

(i) * * *

(2) Observer training. In order to be deployed on any scallop or Atlantic herring vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Certification/ Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop or Atlantic herring vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) * * *

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop or Atlantic herring vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

* * * * *

(m) Atlantic herring observer coverage. (1) Pre-trip notification. At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, a vessel issued a Limited Access Herring Permit or a vessel issued an Areas 2/3 Open Access Herring Permit on a declared herring trip or a vessel issued an All Areas Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in §

648.200(f)(1) and (3), and herring carriers must provide notice of the following information to NMFS: Vessel name, permit category, and permit number; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; gear type; target species; and intended area of fishing, including whether the vessel intends to engage in fishing in the Northeast Multispecies Closed Areas, Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, at any point in the trip. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 12 hr prior to vessel departure from port.

(2) When vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, each vessel must provide to observers, when requested, the estimated weight of each species brought on board or released on each tow.

(3) Sampling requirements. In addition to the requirements at paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a Limited Access Herring Permit on which a NMFS-approved observers is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and

holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(iv) Visual access to net/codend or purse seine bunt and any of its contents after pumping has ended and before the pump is removed from the net. On trawl vessels, the codend including any remaining contents should be brought on board. If bringing the codend on board is not possible, the vessel operator must ensure that the observer can see the codend and its contents as clearly as possible before releasing its contents.

(4) Measures to address slippage. (i) No vessel issued a limited access Atlantic herring permit and carrying a NMFS-approved observer may release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought on board the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If fish are released prior to being brought on board the vessel due to any of the above exceptions, the vessel operator must:

(A) Complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(5) The following observer coverage requirements are effective 1 year after the effective date of Amendment 5.

(i) Vessels issued an All Areas Limited Access Herring Permit or an Areas 2/3 Limited Access Herring Permit may not fish for, take, retain, possess, or land Atlantic herring without carrying a NMFS-approved observer, unless the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of this observer requirement for that trip pursuant to paragraph (m)(5)(vi) of this section.

(ii) At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, a vessel issued a Limited Access Herring Permit must provide notice to NMFS if it intends to fish in the River Herring Monitoring/Avoidance Areas, described at § 648.200(f)(4), at any point in the trip. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 12 hr prior to vessel departure from port.

(iii) NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective Atlantic herring trip pursuant to paragraph (m)(1) of this section.

(iv) An owner, operator, or manager of a vessel required to carry an observer under paragraph (m)(5)(i) of this section must arrange for carrying an observer certified through the Atlantic Herring High Volume Fisheries observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section or from a state agency. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 24 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at <http://www.nefsc.noaa.gov/femad/fsb/>.

(v) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 24 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available.

(vi) NMFS/NEFOP shall issue such a waiver within 12 hr, if the conditions of paragraph (m)(5) of this section are met. A vessel may not begin the trip without being issued a waiver. All waivers for observer coverage shall be issued to the vessel by VMS so a vessel may have on board a verification of the waiver.

(vii) Vessels issued an All Areas Limited Access Herring Permit or an Areas 2/3 Limited Access Herring Permit may not fish for, take, retain, possess, or land Atlantic herring from within the River Herring Monitoring/Avoidance Areas, described at § 648.200(f)(4) without carrying a NMFS-approved observer.

(vii) Owners of vessels issued an All Areas Limited Access Herring Permit or an Areas 2/3 Limited Access Herring Permit must pay observer service providers \$325 per sea day.

7. In § 648.13, paragraph (f)(2)(i) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) * * *

(2) * * *

(i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it either is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii), or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS, consistent with the requirements at § 648.10(l)(1).

* * * * *

8. In § 648.14, paragraphs (r)(1)(ii)(C) and (r)(1)(vii)(B) are revised, and paragraphs (r)(1)(viii)(C) and (D) and (r)(2)(viii) through (xiii) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(ii) * * *

(C) Possess or land more herring than is allowed by the vessel's Atlantic herring permit or the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively, including vessels pair trawling, purse seining, or transferring herring at-sea.

* * * * *

(vii) * * *

(B) Receive Atlantic herring at sea in or from the EEZ, solely for transport, without an Atlantic herring carrier letter of authorization from the Regional Administrator or having declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

* * * * *

(viii) * * *

(C) Fail to declare via VMS into the herring fishery by entering the appropriate herring fishery code and appropriate gear code prior to leaving port at the start of each trip to harvest, possess, or land herring, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open Access Herring Permit or is intending to act as an Atlantic herring carrier.

(D) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least of 6 hr prior to

landing, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open Access Herring Permit or has declared an Atlantic herring carrier trip via VMS.

* * * * *

(2) * * *

(viii) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a) through (e), without a NMFS-approved observer on board, if the vessel has been issued an Atlantic herring permit.

(ix) Release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions defined at § 648.202(b)(2), if fishing any part of a tow inside the Northeast Multispecies Closed Areas, as defined at § 648.81(a) through (e).

(x) Fail to immediately leave the Northeast Multispecies Closed Areas and complete, sign, and submit an affidavit as required by § 648.202(b)(2) and (4).

(xi) Release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, unless subject to one of the exemptions defined at defined at § 648.11(m)(4)(i).

(xii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the requirements at § 648.11(m)(4)(iii)(A).

(xiii) Fail to immediately return to port after slipping catch while carrying a NMFS-approved observer when fishing with a particular gear type in a particular herring management

area after NMFS has determined that the slippage cap for that particular gear type and management area has been reached, pursuant to § 648.203(c).

* * * * *

9. In § 648.200, paragraph (f)(4) is added and paragraph (g) is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(f) * * *

(4) River Herring Monitoring/Avoidance Areas.

(i) January-February River Herring Monitoring/Avoidance Areas. The January-February River Herring Monitoring/Avoidance Areas include 4 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) January-February River Herring Monitoring/Avoidance Sub-Area 1.

(1) 43°00'N Lat., 71°00'W Long.;

(2) 43°00'N Lat., 70°30'W Long.;

(3) 42°30'N Lat., 70°30'W Long.;

(4) 42°30'N Lat., 71°00'W Long.; and

(5) 43°00'N Lat., 71°00'W Long.

(B) January-February River Herring Monitoring/Avoidance Sub-Area 2.

(1) 42°00'N Lat., 70°00'W Long.;

(2) 42°00'N Lat., 69°30'W Long.;

(3) 41°30'N Lat., 69°30'W Long.;

(4) 41°30'N Lat., 70°00'W Long.; and

(5) 42°00'N Lat., 70°00'W Long.

(C) January-February River Herring Monitoring/Avoidance Sub-Area 3.

(1) 41°30'N Lat., 72°00'W Long.;

(2) 41°30'N Lat., 71°00'W Long.;

(3) 40°30'N Lat., 71°00'W Long.;

(4) 40°30'N Lat., 72°30'W Long.;

(5) The southernmost shoreline of Long Island, New York, 72°30'W Long.;

(6) The north-facing shoreline of Long Island, New York, 72°00'W Long.; and

(7) 41°30'N Lat., 72°00'W Long.

(8) Points 5 and 6 are connected following the coastline of the south fork of eastern Long Island, New York.

(D) January-February River Herring Monitoring/Avoidance Sub-Area 4

(1) 40°30'N Lat., 74°00'W Long.;

(2) 40°30'N Lat., 72°30'W Long.;

(3) 40°00'N Lat., 72°30'W Long.;

(4) 40°00'N Lat., 72°00'W Long.;

(5) 39°30'N Lat., 72°00'W Long.;

(6) 39°30'N Lat., 73°30'W Long.;

(7) 40°00'N Lat., 73°30'W Long.;

(8) 40°00'N Lat., 74°00'W Long.; and

(9) 40°30'N Lat., 74°00'N Long.;

(10) Points 8 and 9 are connected following 74°W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(ii) March-April River Herring Monitoring/Avoidance Areas. The March-April River Herring Monitoring/Avoidance Areas include 5 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) March-April River Herring Monitoring/Avoidance Sub-Area 1.

- (1) 43°00'N Lat., 71°00'W Long.;
- (2) 43°00'N Lat., 70°30'W Long.;
- (3) 42°30'N Lat., 70°30'W Long.;
- (4) 42°30'N Lat., 71°00'W Long.; and
- (5) 43°00'N Lat., 71°00'W Long.

(B) March-April River Herring Monitoring/Avoidance Sub-Area 2.

- (1) 42°00'N Lat., 70°00'W Long.;
- (2) 42°00'N Lat., 69°30'W Long.;
- (3) 41°30'N Lat., 69°30'W Long.;
- (4) 41°30'N Lat., 70°00'W Long.; and
- (5) 42°00'N Lat., 70°00'W Long.

(C) March-April River Herring Monitoring/Avoidance Sub-Area 3.

- (1) 41°00'N Lat., The easternmost shoreline of Long Island, New York;
- (2) 41°00'N Lat., 71°00'W Long.;
- (3) 40°30'N Lat., 71°00'W Long.;

- (4) 40°30'N Lat., 71°30'W Long.;
- (5) 40°00'N Lat., 71°30'W Long.;
- (6) 40°00'N Lat., 72°30'W Long.;
- (7) The southernmost shoreline of Long Island, New York, 72°30'W Long.; and
- (8) 41°00'N Lat., The easternmost shoreline of Long Island, New York.
- (9) Points 7 and 8 are connected following the southern shoreline of Long Island, New York.

(D) March-April River Herring Monitoring/Avoidance Sub-Area 4.

- (1) 40°00'N Lat., 73°30'W Long.;
- (2) 40°00'N Lat., 72°30'W Long.;
- (3) 39°00'N Lat., 72°30'W Long.;
- (4) 39°00'N Lat., 73°30'W Long.; and
- (5) 40°00'N Lat., 73°30'W Long.

(E) March-April River Herring Monitoring/Avoidance Sub-Area 5.

- (1) 40°30'N Lat., 74°00'W Long.;
- (2) 40°30'N Lat., 73°30'W Long.;
- (3) 40°00'N Lat., 73°30'W Long.;
- (4) 40°00'N Lat., 74°00'W Long.; and
- (5) 40°30'N Lat., 74°00'W Long.

(6) Points 4 and 5 are connected following 74°W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(iii) May-June River Herring Monitoring/Avoidance Areas. The May-June River

Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) May-June River Herring Monitoring/Avoidance Sub-Area 1.

- (1) 44°00'N Lat., 69°30'W Long.;
- (2) 44°00'N Lat., 69°00'W Long.;
- (3) 43°30'N Lat., 69°00'W Long.;
- (4) 43°30'N Lat., 69°30'W Long.; and
- (5) 44°00'N Lat., 69°30'W Long.

(B) May-June River Herring Monitoring/Avoidance Sub-Area 2.

- (1) 42°00'N Lat., 70°00'W Long.;
- (2) 42°00'N Lat., 69°30'W Long.;
- (3) 41°30'N Lat., 69°30'W Long.;
- (4) 41°30'N Lat., 70°00'W Long.; and
- (5) 42°00'N Lat., 70°00'W Long.

(iv) July-August River Herring Monitoring/Avoidance Areas. The July-August River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) July-August River Herring Monitoring/Avoidance Sub-Area 1.

- (1) 44°00'N Lat., 70°00'W Long.;
- (2) 44°00'N Lat., 69°30'W Long.;

(3) 43°00'N Lat., 69°30'W Long.;

(4) 43°00'N Lat., 70°00'W Long.; and

(5) 44°00'N Lat., 70°00'W Long.

(6) The boundary from Points 4 to 5 excludes the portions Maquoit and Middle Bays east of 70°00'W Long.

(B) July-August River Herring Monitoring/Avoidance Sub-Area 2.

(1) 44°00'N Lat., 69°00'W Long.;

(2) 44°00'N Lat., 68°30'W Long.;

(3) 43°30'N Lat., 68°30'W Long.;

(4) 43°30'N Lat., 69°00'W Long.; and

(5) 44°00'N Lat., 69°00'W Long.

(v) September-October River Herring Monitoring/Avoidance Areas. The September-October River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) September-October River Herring Monitoring/Avoidance Sub-Area 1.

(1) 44°30'N Lat., 68°00'W Long.;

(2) 44°30'N Lat., 67°00'W Long.;

(3) 44°00'N Lat., 67°00'W Long.;

(4) 44°00'N Lat., 68°00'W Long.; and

(5) 44°30'N Lat., 68°00'W Long.

(B) September-October River Herring Monitoring/Avoidance Sub-Area 2.

- (1) 43°00'N Lat., 71°00'W Long.;
- (2) 43°00'N Lat., 70°30'W Long.;
- (3) 42°30'N Lat., 70°30'W Long.;
- (4) 42°30'N Lat., 71°00'W Long.; and
- (5) 43°00'N Lat., 71°00'W Long.

(vi) November-December River Herring Monitoring/Avoidance Areas. The November-December River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) November-December River Herring Monitoring/Avoidance Sub-Area 1.

- (1) 43°00'N Lat., 71°00'W Long.;
- (2) 43°00'N Lat., 70°00'W Long.;
- (3) 42°00'N Lat., 70°00'W Long.;
- (4) 42°00'N Lat., 69°30'W Long.;
- (5) 41°30'N Lat., 69°30'W Long.;
- (6) 41°30'N Lat., 70°00'W Long.;
- (7) The south-facing shoreline of Cape Cod, MA, 70°00'W Long.;
- (8) 42°00'N Lat., The west-facing shoreline of Cape Cod, MA Long.;
- (9) 42°00'N Lat., 70°30'W Long.;
- (10) 42°30'N Lat., 70°30'W Long.;
- (11) 42°30'N Lat., 71°00'W Long.; and
- (12) 43°00'N Lat., 71°00'W Long.

(13) Points 7 and 8 are connected following the coastline of Cape Cod, MA.

(B) November-December River Herring Monitoring/Avoidance Sub-Area 2.

(1) 41°30'N Lat., 72°00'W Long.;

(2) 41°30'N Lat., 70°00'W Long.;

(3) 40°30'N Lat., 70°00'W Long.;

(4) 40°30'N Lat., 70°30'W Long.;

(5) 41°00'N Lat., 70°30'W Long.;

(6) 41°00'N Lat., 72°00'W Long.; and

(7) 41°30'N Lat., 72°00'W Long.

(g) All aspects of the following measures can be modified through the specifications process:

(1) AMs;

(2) Possession limits;

(3) River Herring Monitoring/Avoidance Areas;

(4) River herring catch caps; and

(5) Provisions related to industry-funded catch monitoring program (including cost sharing provisions, service provider requirements, waivers).

10. In § 648.202, paragraph (b) is added to read as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b) Fishing in Northeast Multispecies Closed Areas. (1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from

the Closed Areas, including Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard a NMFS-approved observer.

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(i) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(ii) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(iii) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(3) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board.

(4) If fish are released prior to being brought aboard the vessel due to any of the above exceptions, the vessel operator must:

(i) Stop fishing and immediately exit the Closed Areas. Once the vessel has exited the Closed Areas, it may continue to fish, but may not fish inside the Closed Areas for the remainder of that trip.

(ii) Complete and sign a Midwater Trawl Released Codend Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

11. In § 648.203, paragraph (c) is added to read as follows:

§ 648.203 Gear restrictions.

* * * * *

(c) Slippage cap. If NMFS determines that there have been 10 slippage events in a management area by gear type, including midwater trawl, bottom trawl, or purse seine, by vessels issued limited access Atlantic herring permits and carrying NMFS-approved observers, limited access vessels using that particular gear type that subsequently slip catch in that management area while carrying a NMFS-approved observer must immediately stop fishing and return to port after each slippage event. NMFS shall implement these restrictions in accordance with the APA.

12. In § 648.204, paragraph (b) is revised to read as follows:

§ 648.204 Possession restrictions.

* * * * *

(b) Each vessel working cooperatively in the herring fishery, including vessels pair trawling, purse seining, and transferring herring at-sea, must be issued a valid herring permit to

fish for, possess, or land Atlantic herring and are subject to the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively.

13. Section 648.205 is revised to read as follows:

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel or vessel issued an Areas 2/3 Open Access Permit, with the exception of fixed gear fishermen, must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. (See § 648.10(m) for VMS notification requirements.)

14. In § 648.206, paragraphs (b)(30) and (b)(31) are revised, and paragraphs (b)(32) through (39) are added to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(30) AMs;

(31) Changes to vessel trip notification and declaration requirements;

(32) Adjustments to measures to address net slippage, including sampling requirements, exceptions for trip termination threshold, trip termination threshold amounts/divisions by area and/or gear type;

(33) Adjustments to requirements for observer coverage levels;

(34) Provisions related to industry-funded catch monitoring program (including cost allocation provisions, service provider requirements, waivers);

(35) River Herring Monitoring/Avoidance Areas;

(36) Provisions for river herring incidental catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting incidental catch events, compiling data, and notifying the fleet of changes to the area(s); the definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring incidental catch in a particular area(s); the threshold for river herring incidental catch that would trigger the need for vessels to be alerted and move out of the area(s); the distance that vessels would be required to move from the area(s); and the time that vessels would be required to remain out of the area(s).

(37) Changes to criteria/provisions for access to Northeast Multispecies Closed Areas;

(38) River herring catch caps; and

(39) Any other measure currently included in the FMP.

* * * * *

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